IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 217 OF 1989.

1. Atmaram Hari Bahira,
(since deceased through L.Rs.)
A) Jaybharat Atmaram Bahira,
R/at Panvel, Taluka: Panvel,
Dist. Raigad.
B) Achut Atmaram Bahira,
R/at Panvel, Taluka Panvel,
Dist. Raigad.

2. Parshuram Hari Bahira,
(since deceased through L.Rs.)
A) Savitribai Parshuram Bahira.
B) Satyabhama Bahgwan Koli.
C) Pratibha Dinesh Patil.
D) Vasudev Parshuram Bahira.
E) Manda Vivek Bahira.

3. Smt.Kamlubai Shivram Bahira,
(since deceased through LRs.)
A) Sunanda Mahadev Koli.
B) Mahananda Nagaji Koli.
C) Sumati Ram Koli.
D) Yashodhara Narendra Koli,

All residing at Panvel, Taluka
Panvel, Dist. Raigad.

4. Sulochana Parshuram Pagade.
5. Indira Shankar Koli. .... Appellants.

Versus.

The Special Land Acquisition Officer,
Metro Centre No.III, Panvel, Taluka:
Panvel, Dist. Raigad. .... Respondent.

ALONG WITH

FIRST APPEAL NO. 825 OF 1989

The State of Maharashtra,
through the Special Land Acquisition
Officer, Metro Centre No.III, Panvel
Taluka: Panvel, Dist. Raigad. ... Appellant.

Versus.

1. Atmaram Hari Bahira.
   (since deceased through LRs.)
2. Parshuram Hari Bahira.
   (since deceased through LRs.)
3. Kamalubai Shivram Bahira.
   (since deceased through LRs.)
4. Sulochana Parshuram Pagade.
5. Indira Shankar Koli. ... Respondents.

Shri D.S.Sawant for the Appellants in FA 217/89 and
Respondents in FA 825/89.
Shri K.K.Tated, A.G.P. for the Respondent in FA 217/89
and Appellant in FA 825/89.

CORAM : ABHAY S. OKA, J.
DATED : 7th April, 2006.

ORAL JUDGMENT.

1. These are cross appeals preferred for challenging the Judgment and Award dated 31st March 1988 passed by the Civil Judge, Senior Division, Raigad at Alibag in a Reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The acquired land is located in village Kalundre, Taluka Panvel, District Raigad and area of the land acquired is 5500 sq.meters. The land was notified for acquisition by a notification under section 4 of the said Act on 3rd February 1970 for the purpose of development of twin city of Navi Mumbai. The record shows that in response to notice under section 9(3)(4) of the said Act, the Claimants claimed compensation at the rate of Rs.20/- per sq.meter. By Award dated 6th June 1981 made under section 11 of the said Act, the Special Land Acquisition Officer offered market value at

the rate of Rs.7/- per sq.meter. The Award was not accepted by the Claimants and therefore, a reference under section 18 of the said Act was made. By the impugned Judgment and Award, the Reference Court has awarded the market value at the rate of Rs.12/- per sq.meter. The First Appeal No.217 of 1989 is by the original Claimants seeking further enhancement in the market value. First Appeal No.825 of 1989 is by the State of Maharashtra challenging the enhancement in the market value made by the Reference Court.

2. Shri Sawant the learned Counsel appearing for the Appellant (original Claimants) in support of First Appeal No.217 of 1989 placed reliance on a decision of the Division Bench of this Court (Coram: P.S.Shah and Kotwal, JJ) in First Appeal No.382 of 1984 (State of Maharashtra v/s.Bama Balu Tembhe) and other companion Appeals. The Division Bench dealt with Appeals arising out of Awards made under section 18 of the said Act in respect of lands from villages Panvel, Kamothe, Kalundre etc. of Taluka Panvel, Dist. Raigad. The lands subject matter of the First Appeals were also notified for acquisition by a notification under section 4 of the said Act on 3rd February 1970 for the purpose of development of City of Navi Mumbai. He submitted that the said Judgment has attained finality and the

compensation be accordingly awarded to the Claimants. Shri Tated, the learned A.G.P. opposed the prayer made by Shri Sawant and submitted that the rate awarded by the Reference Court deserves to be reduced. He, however, did not dispute that the decision of the Division Bench has attained finality.

3. I have considered the submissions made by the learned Advocates appearing for the parties. The decision of the Division Bench referred to above shows that the location of the lands from village Kalundre, Panvel and other adjoining villages was considered by the Division Bench. The Division Bench awarded market value at the rate of Rs.22.70 per sq.meter for the lands situated in village Kalundre. The lands subject matter of Appeals before the Division Bench were also notified for acquisition on 3rd February 1970. The acquisition of the land which was the subject matter of the said Appeals was also for the same public purpose. As the said decision has admittedly attained finality, the said Judgment is very relevant for the determination of market value of the acquired land in the present case. Shri Tated submitted that deduction on account of the development charges is not made in the present case and therefore, even if the decision of the Division Bench is to be taken as the basis for determination of marke

value, a deduction will have to be made on account of development charges.

4. There is no reason why the decision of the Division Bench should not be applied for determining the market value of the acquired land. In the present case by preferring an appeal, the Claimants have claimed market value only at the rate of Rs.20/- per sq.meter. Though the Claimants are entitled to the market value of Rs.22.70 per sq.meter, since the Claimants have restricted the claim to Rs.20/- per sq.meter, the market value will have to be fixed at Rs.20/- per sq.meter. In view of this position, there is no necessity of making any further deduction on account of development charges.

5. The Award under section 11 of the Act has been made prior to 30th April 1982. Therefore, the Claimants will not be entitled to the statutory benefit of interest under section 23(1-A) of the said Act. However, the Claimants will be entitled to other statutory benefits.

6. Hence the following order is passed:

i) First Appeal No.825 of 1989 is dismissed. The Appellant-State will pay costs of this Appeal to

the Respondents.

ii) First Appeal No.217 of 1989 is allowed and the impugned Judgment and Award is modified.

iii) The Claimants are entitled to the market value of the acquired land at the rate of Rs.20/- per sq.meter together with statutory benefits under section 23(2) and section 28 of the said Act. The Claimants will also be entitled to proportionate costs of the Reference from the State.

iv) The Reference Court will calculate the amount of compensation payable to the Claimants within a period of 4 months from the date of receipt of the writ of this Judgment. It is obvious that while calculating the amount payable to the Claimants, the Reference Court will take into account the amounts which the Claimants have already received. The Reference Court will hear the State before finalising the amount of compensation.

v) The Respondent is directed to pay costs of Appeal No.217 of 1989 to the Appellants.

Judge.